IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 771 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHOGABHAI BAKSHUBHAI SAMA (MUSLAMAN)

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 771 of 2001

MR PRAVIN GONDALIYA for Petitioner No. 1

RULE NOT RECD BACK for Respondent No. 1

MR K.T.DAVE, APP for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 09/11/2001

ORAL JUDGEMENT

#. In this petition filed under Article-226 of the

Constitution of India, the petitioner has challenged the order dated June 18, 2001 (Annexure-'B' to the petition) passed by the externing Authority i.e. Sub-Divisional Magistrate, Viramgam, by which he has externed the petitioner for a period of one year from five districts i.e. Ahmedabad Rural, Ahmedabad City, Surendranagar, Gandhinagar and Kheda and also the order dated September 11, 2001 (Annexure-'C' to the petition) passed by the appellate Authority confirming the said order and prayed to issue a writ, order or direction quashing and setting aside both the above orders.

#. A show-cause notice dated March 14, 2001 (Annexure-A to the petition) under sec.59 of the Bombay Police Act was issued to the petitioner, wherein, several allegations were made against him to the effect that he is a strong headed quarrelsome and aggressive person who has no fear of law and order, picking up quarrel with people and give threats to kill them, continues his anti social activities by which he is causing physical and financial damage to the people and the people are afraid of filing complaint against him and the activities carried out by him is detrimental for maintenance of public order. Besides this, two criminal cases for the commission of offences under the Indian Penal Code and one chapter case is registered against the petitioner. Therefore, by issuing a show-cause notice the petitioner was called upon to show cause as to why he should not be externed for a period of one year from the districts to which reference is made in earlier paragraph of this judgment.

#. The petitioner gave reply to the said show-cause notice. The externing Authority, after considering the material on record, passed the impugned order of externment dated May 28, 2001 in exercise of the powers conferred under sec.56(B) of the Act externing the petitioner for a period of one year from the above mentioned districts.

#. Aggrieved by the aforesaid order passed by the externing Authority, the petitioner preferred an appeal before the appellate Authority, which was dismissed by the appellate Authority vide order dated September 11, 2001, which has given rise to the present petition.

#. Mr. Pravin Gondalia, learned advocate for the petitioner raised several contentions and tried to convince this Court that the order of externment suffers from various vices much less it is recorded in clear non-application of mind. Besides this, he has also

raised a contention that the petitioner belongs to Ahmedabad Rural and he is externed not only from Ahmedabad Rural but from Ahmedabad City, Gandhinagar, Surendranagar and Kheda Districts. He also contended that the alleged so-called activities which are narrated in the show-cause notice are confined to Ahmedabad Rural only and the externing Authority has not mentioned anything about the activities of the petitioner in the contiguous four districts. Therefore, according to the learned advocate for the petitioner the impugned order of externment suffers from the vices of non-application of mind, and is, therefore, liable to be quashed and set aside.

#. Mr.K.T.Dave, learned APP opposed the petition and contended that the petitioner is a strong headed person and his activities are detrimental to the society at large. He is involved in two criminal cases. Therefore, the externing Authority has rightly passed the order externing the petitioner for a period of one year. He, therefore, urged to dismiss the petition.

#. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the order passed by the externing Authority, so also the order passed by the appellate Authority and other papers annexed to the petition.

#. It is true that the externing Authority has power under sec.56 of the Act to remove or extern a person not only from the district within which the externing Authority has jurisdiction, but also from the district contiguous to his own district. The criteria for passing such an order is provided for in sec.56 and there must be some indication in the order itself of the existence of circumstances which would lead to the satisfaction of the authority that it was necessary not only to extern a person from his own district but also from the contiguous district. Such circumstances must be qua every area or region from which a person is directed to be externed and there must be some material or indication of such material in the order.

#. Coming to the facts of the present case, there is no matter of doubt that the externing Authority has not mentioned either in his show-cause notice or in the impugned order of externment as to what necessitated him to pass the order of externment of the petitioner from the above mentioned four districts in addition to Ahmedabad Rural. Therefore, it can be said that at the

time of passing of the impugned order of externment the externing Authority has not mentioned as to why the petitioner should be externed from other four districts in addition to Ahmedabad Rural. On this sole ground, the order of the externing Authority externing the petitioner and that of the appellate Authority confirming the order of externment are rendered invalid and illegal and deserves to be quashed and set aside.

##. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned orders at Annexures-'B' and 'C' to the petition are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(A.M. Kapadia, J.)
Jayanti*